

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to waivers

The Public Safety Department hereby amends Chapter 10, “Practice and Procedure Before the Department of Public Safety,” and Chapter 401, “Peace Officers’ Retirement, Accident, and Disability System—Administrative Procedures,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 17A.9A.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

These amendments to Chapters 10 and 401 reflect the changes made to Iowa Code section 17A.9A by 2020 Iowa Acts, House File 2389. Those changes include striking references to variances as well as the requirement that agencies submit semiannual reports on waivers of rules to the Administrative Rules Coordinator and the Administrative Rules Review Committee. These amendments also reflect a new requirement for agencies to submit information regarding a waiver on an Internet site devised by the Administrative Rules Coordinator within 60 days of granting or denying the waiver.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 2, 2021, as **ARC 5654C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 23, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on November 24, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 661—10.222(17A) as follows:

661—10.222(17A) Waivers of rules. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the department of public safety in situations where no other more specific procedure provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule. Generally, more specific procedures exist for considering waivers from rules of the state fire marshal and from provisions of the state of Iowa building code.

10.222(1) No change.

10.222(2) Criteria for waiver or variance. In response to a petition completed pursuant to this rule, the department may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

a. to d. No change.

10.222(3) to 10.222(9) No change.

10.222(10) ~~Summary reports~~ Submission of waiver information. ~~Semiannually, the department shall prepare a summary report identifying~~ When the department grants a waiver, the department shall submit information required by Iowa Code section 17A.9A and in the manner prescribed by Iowa Code section 17A.9 within 60 days. The Internet site shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department's actions on waiver requests. If practicable, the report department shall detail include information detailing the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

10.222(11) to 10.222(14) No change.

10.222(15) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE IOWA DEPARTMENT OF PUBLIC SAFETY

Petition by (name of petitioner) for the
waiver/~~variance~~ of (insert rule citation)
relating to (insert the subject matter).



PETITION FOR
WAIVER/~~VARIANCE~~

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or ~~variance~~). Also provide the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. to 4. No change.

- Why applying the rule would result in undue hardship to the petitioner;
- Why waiving the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and

- How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the department, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. and 7. No change.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver ~~or variance~~.

9. and 10. No change.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

This rule is intended to implement Iowa Code section 17A.22.

ITEM 2. Amend rule 661—401.113(17A,97A) as follows:

661—401.113(17A,97A) Waivers of rules. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from the rule in question.

401.113(1) and 401.113(2) No change.

401.113(3) *Criteria for waiver* ~~or variance~~. In response to a petition completed pursuant to this rule, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

a. to d. No change.

401.113(4) to 401.113(9) No change.

401.113(10) *Indexing*. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders may contain information the board is authorized or required to keep confidential, the board may instruct the secretary to accordingly redact confidential information from petitions or orders prior to public inspection. Rules for which a petition for a waiver have been granted or denied are posted on the department's website and available to the public.

401.113(11) *Summary reports*. ~~Summary information identifying~~ When the department grants a waiver, the department shall submit the required information on the department's website within 60 days. The department's website shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests ~~shall be included in semiannual reports prepared by the agency rules administrator of the department which contain such information for administrative rules of the department.~~ To the extent practicable, the department shall include information detailing the extent to which the granting of waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

401.113(12) to 401.113(15) No change.

401.113(16) *Sample petition for waiver*. A petition for waiver filed in accordance with this rule must meet the requirements specified herein and must substantially conform to the following form:

PUBLIC SAFETY PEACE OFFICERS'
RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

Petition by (name of petitioner) for the
waiver/~~variance~~ of (insert rule citation)
relating to (insert the subject matter).



PETITION FOR
WAIVER/~~VARIANCE~~

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or ~~variance~~). Also provide the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. to 4. No change.

- Why application of the rule would result in undue hardship to the petitioner;
- Why waiver of the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the benefits or rights affected by the requested waiver. Include a description of each contested case hearing held, or any investigations related to the benefits or rights.

6. and 7. No change.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver or ~~variance~~.

9. and 10. No change.

I hereby attest to the accuracy and truthfulness of the above information.

(Date)

(Petitioner's Signature)

[Filed 9/23/21, effective 11/24/21]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/20/21.